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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Inquiry Concerning the Deployment of	)	
Advanced Telecommunications	)	CC Docket 98-146
Capability to All Americans in a Reasonable	)	
and Timely Fashion, and Possible Steps	)	
to Accelerate Such Deployment	)	
Pursuant to Section 706 of the	)	
Telecommunications Act of 1996	)	

To the Commission:

REPLY COMMENTS OF THE AMERICAN PUBLIC POWER ASSOCIATION

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Summary

APPA submits that public power utilities are uniquely well-suited to foster the rapid deployment of advanced telecommunications capabilities and to facilitate the entrance of new competitive providers through public-private partnerships, particularly in rural areas, in a manner consistent with the underlying goals of the Telecommunications Act and Section 706. In fact, in many areas of the country, public power utilities have existing infrastructure in place that would allow for the immediate introduction of advanced services on a competitive basis.

Significantly, public power's participation in providing advanced infrastructure can effectively advance both the goals of universal service and competition. Unlike some incumbent rural carriers that eschew competition and seek access to increase universal service subsidies, public power utilities, if not denied the opportunity, will deploy advanced capabilities in rural areas and help lower the costs of universal service in the process. Public power has a proven commitment to rural areas, seventy-five percent of APPA's members serve rural communities with populations of less than 10,000. As entities of local government over seen by elected officials, public power utilities are directly responsive and accountable to the people that they serve, and are therefore inherently focused on providing the necessary infrastructure and capabilities that their communities need to flourish.

The vast majority of commenters support the idea that there are a large number of potential providers of advanced telecommunications infrastructure. These commenters echo APPA's observation that, if the FCC simply follows the clear language of the Act, many entities, including public power utilities, will move forward and deploy advanced telecommunications infrastructure. Further, APPA is in complete agreement with the large number of commenters that say that the most important action the Commission can take to speed deployment of

advanced telecommunications services is to implement and enforce aggressively the market-opening obligations of the Act. Specifically, the FCC should vigorously apply its preemption authority under Section 253 of the Act to remove all state and local barriers to entry by "any entity," including public power utilities. In the end, the FCC's rules should embrace competitive neutrality and local choice.

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The American Public Power Association (APPA) submits these reply comments in response to the Commission's Notice of Inquiry (*NOI*) on the rapid deployment of advanced telecommunications capacity to all Americans. As the national service organization representing the interests of more than 2,000 consumer-owned, locally-operated, not-for-profit electric utilities that provide electricity to one in every seven Americans in the continental United States, APPA submitted extensive comments in this proceeding. APPA's comments were in direct response to the Commission's express inquiry about the role that public power utilities can play in helping the Commission fulfill its responsibilities under Section 706 of the Telecommunications Act to "promote the availability of telecommunications services generally and advanced services in particular to specific segments of the population, including low income people, people in rural areas, schools, classrooms, libraries and health care facilities." *NOI*, ¶ ¶ 5, 48.

In its comments, APPA explained that public power utilities are uniquely well-suited to foster the rapid deployment of advanced telecommunications capabilities, and facilitate the entrance of new competitive providers through public-private partnerships, particularly in rural areas, in a manner consistent with the underlying goals of the Telecommunications Act and Section 706. As entities of local government over seen by elected officials, public power entities are directly responsive and accountable to the people that they serve, and are therefore inherently focused on providing the necessary infrastructure and capabilities that their communities need to flourish. To maintain their core business of providing electric power in the 21st Century, they have constructed, or will construct, highly sophisticated broadband telecommunications facilities. In many instances, existing facilities can readily support the provision of voice, video, data and other advanced communications services to the same customer base already being provided electricity and to an expanded set of consumers, either by the public power utilities themselves or by other entities. Public power utilities also have more than a century of experience in bringing high quality service and competition to the communities they serve. They have skilled work forces that are accustomed to dealing with complex technologies. They have access to poles, conduits, ducts, rights of way and direct connections to their customers. They know how to bill customers and provide prompt and efficient customer support. They also have a long and rich tradition of universal service and community involvement. As a low cost provider, without the need to generate a profit and offer returns to equity investors, public power utilities are positioned to offer advanced telecommunications capabilities even where the costs of providing service outweighs the profit potential.

APPA further explained that the Commission can go a long way toward meeting the requirements of Section 706 by ensuring that public power utilities have a full and fair opportunity

to provide or facilitate the provision of telecommunications services in their communities. As APPA noted, the Commission has ample authority under the Telecommunications Act to do so; it need only apply the Act as written. In particular, APPA urged the Commission to adhere to the key definitions in the Act, which were carefully crafted to encourage municipal involvement in telecommunications. Further, APPA implored the Commission to apply its preemption authority under Section 253 of the Act to remove vigorously all state and local barriers to entry by "any entity," including any public power utility. And finally, APPA noted that if the Commission believes that new interpretations or programs are necessary to accommodate new developments since the Act became law, it should ensure that such interpretations or programs do not discriminate against public power utilities.

Below, APPA addresses these issues in the context of responding to the comments of the various parties to this proceeding.

I. THE COMMENTS UNDERSCORE THE RELEVANCE OF PUBLIC POWER'S HISTORY TO THE PROVISION OF ADVANCED SERVICES TO ALL AMERICANS

In its initial comments APPA provided a brief summary of the history of the electric power industry because there are many striking parallels between the evolution of the power industry and the telecommunications industry. Central to that discussion was the vital role that publicly-owned power utilities played in ensuring that all Americans received the benefits of the "advanced technology" of that era -- electricity -- on a reasonable and timely basis. Seventy-five percent of APPA's members serve rural communities with populations of less than 10,000.

As APPA related, the development of the electric power industry followed a path that should give pause to those who believe that private profit-maximizing firms can or will provide advanced services to all Americans in the early years (or decades) of their operations, when the

allure of the most profitable markets is most compelling. Just as privately-owned electric utilities conceptualized the process of electrification as "a series of markets that could best be exploited in a particular sequence" and did not seek to furnish electricity in all markets for half a century,[1] so too have today's telecommunications carriers indicated a specific targeted-entry strategy for advanced telecommunications capabilities that focuses on lucrative business markets. Indeed, the Association for Local Telecommunications Service (ALTS) acknowledges this point and argues that the FCC "must recognize that any advanced telecommunications technology or service is likely to appeal and be marketed first to businesses and, after being proven in that market, introduced to residential consumers."[2] GTE maintains that "it is to be expected" that service providers "are deploying advanced telecommunications capability solely or predominantly in urban areas. It can be expensive to invest in the infrastructure needed to provide such service. Accordingly, it is rational to build the infrastructure first in areas where demand is likely to be greatest and unity costs are likely to decline most quickly. Once economies of scale and scope are captured, infrastructure can be extended to less densely populated locations."[3]

Similarly, SBC Communications states: "Even where advanced telecommunications capability is available that could technically and operationally be deployed, the expected demand and associated costs may make the deployment uneconomical, particularly in rural areas."[4] The National Telecommunications Cooperative Association (NTCA) puts it in even starker terms.

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[1] D. Nye, *Electrifying America* at 26-27 (1990); *Power Struggle* 30-31.
[2] ALTS, p.12.
[3] GTE, p. 10.
[4] SBC, p. 7.

NTCA notes that, in its opinion, in rural communities, "there will always be areas where cost of providing service outweighs the profit potential."[5]

Just as a century ago private sector electric utilities left rural and low income communities literally in the dark, the "bottom-line" focus of today's private sector telecommunications carriers threatens to leave many consumers "unplugged." There is nothing venal in this, it is simply the way that profit-maximizing firms fulfill their responsibilities to their shareholders. But, as the Alliance for Public Technology (APT) notes, this potential for "electronic red-lining" may prevent all Americans from obtaining access to the advanced capabilities that Congress promised in Section 706.[6]

In response to this problem, several incumbents have suggested that the FCC take an active role in expanding access to advanced infrastructure. For example, GVNW, a consulting firm, suggests that rural America should and will remain predominantly a "one-pipe" world and that the FCC should provide subsidies to incumbents. Similarly, the National Rural Telecommunications Association (NRTA) proposes increased universal service funding, and artificially protecting markets from competition.[7]

APPA suggests that the FCC take a page from history, and allow communities to provide advanced capabilities for themselves through their consumer-owned electric utilities. This approach has served the nation well for more than a century in the electric power industry, and it can do the same now in the telecommunications industry. This approach would also be consistent

[5] NTCA, p. 5.
[6] APT, p. 2.
[7] GVNW, p. 6; NRTA, pp. 9-10; and NTCA, p. 4.

with NTCA's contention (in the context of telephone cooperatives) that customers need the flexibility to determine how best to serve their needs.[8]

II. THE COMMENTS SUPPORT A WIDE ARRAY OF ENTRANTS AND RELIANCE ON MARKET FORCES TO PROVIDE MAXIMUM CUSTOMER CHOICE

In the *NOI,* the Commission inquired about the assets, abilities and incentives of various entities to provide advanced telecommunications capabilities. *NOI*, ¶¶ 18, 56-57. The vast majority of commenters support the idea that there are a large number of potential providers of advanced telecommunications infrastructure.[9] For example, Bell Atlantic notes that multiple providers of cable, fiber to the home, ADSL over copper, satellite and wireless technologies, and power lines will provide consumers competing choices.[10]

Because so many potential entrants exist, most of the commenters argue that the FCC should not attempt to pre-determine the "winners" and "losers." For example, GTE cautions that "the Commission must be careful not to favor or deter any technology or class of providers."[11] Similarly, SBC emphatically argues that, in the end, "the regulatory treatment of advanced telecommunications capability and advanced service should be competitively neutral, and not depend upon the identity of the provider, or its historical regulatory category."[12] APPA agrees, and would urge the FCC to apply this logic equally to public power utilities seeking to provide advanced capabilities.

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[8] NTCA, at p. 6, fn. 9 (explaining that its members are organized as cooperatives, and thus the subscribers are also the owners and have a single interest).
[9] ALTS, p. 13; Bell Atlantic, p. 8; BellSouth, p. 3; Cablevision, p. 5; GTE, p. 3; MCI, p. 15; New York Public Service Commission (NYPSC), p. 2; and SBC, p. 9.
[10] Bell Atlantic, p. 8.
[11] GTE, p. 4.
[12] SBC, p. 9.

The comments evidenced strong support for a deregulatory approach that relies to a large degree on consumer choice. In the words of the New York Public Service Commission (NYPSC), "the competitive marketplace should be allowed to develop in response to consumer demand for advanced technology, free from regulatory barriers."[13] Similarly, Ameritech argues that the deployment of advanced capability must be completely consistent with an open market system, and "consumer sovereignty."[14] Again, APPA agrees, and reiterates that an "open market," by definition, entails the right of consumers to choose their own service providers, including themselves. Because public power utilities are directly accountable and responsive to the communities that they serve they represent the ultimate expression of consumer sovereignty.

III. THE COMMENTS RECOGNIZE PUBLIC POWER UTILITIES AS BEING UNIQUELY WELL-SUITED TO MEET GOALS OF SECTION 706

A. Utilities' Telecommunications Capabilities Generally

In its initial comments, APPA detailed the extensive telecommunications capabilities that electric utilities already possess in order to maintain safe, reliable and efficient electric service. APPA indicated that the necessity of operating these telecommunications networks has placed all electric utilities in a strong position to foster the development of advanced telecommunications capabilities, and facilitate the entrance of new private sector competitive providers. In fact, public power utilities have in place basic infrastructure to provide advanced telecommunications capabilities and services to residential, commercial and industrial consumers, in rural and urban areas.

[13] NYPSC, p. 1.
[14] Ameritech, p. 8.

A variety of commenters echo APPA's assessment of the potential role of utilities in providing advanced services.[15] For example, Nortel characterizes utilities as "natural participants" in the delivery of advanced telecommunications capability.[16] Similarly, describing power companies as "potential competitors" that have an existing infrastructure that reaches nearly every home in the United States, BellSouth indicates that utilities "must be considered likely long-range entrants into the broadband services market that could capture customers" by taking advantage of "their existing customer base, infrastructure, rights-of-way, billing and customer service expertise, reputation, and experience managing complex networks."[17]

Further, UTC describes the ability of utilities to stimulate competition in the provision of advanced services. In order to accommodate new advanced energy applications, large and small electric utilities across the country are upgrading their telecommunications infrastructure. In addition to supporting core electric power-related functions, this infrastructure can support the provision of voice, video and high-speed data and other interactive services. UTC states that because utilities need to make significant investments in telecommunications infrastructure to meet their internal communications requirements, and because of advances in telecommunications technology, opportunities are available for utilities to deploy communications networks jointly with commercial telecommunications service providers. UTC notes that these partnering opportunities, which vary from company-to-company as to legal structure and financial relationships, place utilities in the position of serving as "catalysts for competition." That is, the

[15] Bell Atlantic, p. 8; BellSouth, p. 30; Nortel, p. 12; NYPSC, p.2; Technology Entrepreneurs Coalition (TEC), p. 38; and UTC, p.2. It is significant to note, that in describing the potential role of utilities to deploy advanced telecommunications infrastructure, none of the commenters attempts in any way to limit the discussion to private sector electric utilities.
[16] Nortel, p. 12.
[17] BellSouth, pp. 30-31.

utility's participation in the partnership allows the "active" partner to provide competitive communications service to the public more quickly and efficiently.[18]

Among the utility telecommunications infrastructure components, APPA noted that the broadband capabilities of utility fiber systems are particularly well-suited to supporting multiple applications, as utility fiber optic networks often are constructed with reserve capacity to accommodate future growth and/or the needs of new competitive telecommunications providers. As UTC notes, utilities historically installed most of their fiber optics along their transmission corridors. As a result, their provision of fiber capacity to third-parties was largely limited to interexchange carriers. More recently, however, as utilities automate more of their distribution networks, and are implementing sophisticated system control and data acquisition (SCADA) systems, utilities are increasingly placing fiber along their distribution routes, which allows for greater opportunities to provide capacity for local services. UTC reports that in 1994, utility respondents to its fiber optic survey indicated that in instances where fiber was being provided to third-parties, 65% was being marketed along utility transmission routes, with approximately 20% being marketed along distribution routes. UTC indicates that by 1997, that gap had started to narrow, with 51% of the fiber being marketed along transmission routes, and 38% along distribution routes.[19] Thus in many instances, utilities have existing fiber and other advanced infrastructure in place that would allow for the immediate introduction of advanced services.

B. Public Power Utilities Are Uniquely Responsive to Local Needs

The Commission asked for comment on the economic incentive of potential providers to serve all communities. *NOI,* ¶ 61. APPA explained that public power utilities are particularly

[18] UTC, pp. 3-4.
[19] UTC, pp. 5-6.

well-suited to assist in the deployment of advanced telecommunications capabilities to all areas of the country, because they are part of the local government and share its mission of promoting the community's economic, educational and cultural development, and have a rich tradition of providing affordable universal service.

Significantly, as the opening comments demonstrate, incumbents and new telecommunications carriers alike are reluctant to introduce advanced services to all markets. As was the case with the power industry, private sector telecommunications providers are taking a hierarchical entry approach that primarily focuses on the more lucrative markets. Not surprisingly, many of the same rural communities that are currently served by public power systems are the areas that telecommunications carriers will likely leave to last in their deployment of advanced capabilities.

As related by APPA, the majority of public power utilities emerged in response to the failure of private utilities to provide electrical service in their communities because private utilities viewed it as unprofitable. In these cases, communities formed municipal electric utilities to do for themselves what they viewed to be of vital importance to their quality of life and future economic prosperity. Once again, public power utilities are well-positioned to bring the infrastructure of the future to their communities by providing or facilitating the provision of advanced telecommunications capabilities.

Commenters recognize and encourage the unique role that public power systems can play in facilitating the rapid deployment of advanced services to rural areas. For example, the Technology Entrepreneurs Coalition (TEC) states: "Given the existing service areas of many public power utilities and coops, these utilities are well poised to provide telecommunications services to those high-cost areas where incumbent carriers are reluctant to go -- even with

universal service support payments. The primary reason municipals and coops were created originally was because private, profit-making companies bypassed smaller towns to go after more profitable markets. Accordingly, if universal service is truly a "worthy social goal," then TEC would far rather have a local municipality or coop fill the void -- and provide necessary community services and be a powerful engine for local economic growth -- than perpetuate the Commission's existing distorted and expensive universal system of embedded incentive-reducing subsidies."[20]

Similarly, UTC notes that many utilities consider economic development to be part of their mission as a public utility. By helping to develop advanced communications networks, these utilities are helping to improve the economy of the communities that they serve, which in many cases, will yield long-term dividends to the community through attraction of new businesses and retention of residents.[21]

The Rural Research Policy Institute (RPRI) notes that the "market" for rural telecommunications services to which many small scale providers respond is locality-specific.[22] Because municipal electric utilities have established, long-term, relationships with the communities that they serve, these relationships afford them a keen understanding of the requirements of their communities. Moreover, because they are owned by the community, public power utilities are directly accountable to the people they serve. Thus, public power utilities are in a unique position to facilitate the specific advanced capabilities of their individual communities on an affordable basis. This is one of many reasons why it is so important that the Commission

[20] TEC, pp. 38-39.
[21] UTC, p. 4.
[22] RRPI, p. 2.

define "advanced telecommunications capabilities" in a flexible manner that allows each community to obtain the types of services that they require.

C. Public Power Participation Will Help Speed Advanced Services And Defray Universal Service Costs

In the *NOI* the Commission seeks comment on the proper balance between the accomplishment of Congress' universal service goals and Section 706's reliance on market forces for the deployment of advanced telecommunications capabilities. *NOI*, ¶ 73.

A number of rural carriers suggest that these two goals cannot be reconciled and that they must have ever increasing universal service funding in order to deploy advanced services. GVNW argues that rural America will remain predominantly a "one-pipe world" for at least the near term, and that Commission findings on the compatibility of universal service and competition may be flawed, stating: "In a truly competitive arena, the business objective of profit maximization precludes serving unprofitable customers unless one is forced to do so."[23]

NRTA asserts that its members' high quality rural networks have not resulted from the operation of the marketplace. Instead, they have been successful only because of the Rural Utility Service financing programs and the explicit and implicit universal service flows incorporated in to both inter- and intrastate cost recovery arrangements.[24] NRTA suggests that the Commission will eventually have to fulfill its responsibilities under § 706 and § 254(b)(3), which require reasonably comparable rural and urban access to advanced telecommunications and information services at reasonably comparable prices, by providing federal universal support for many or most rural markets.[25] Similarly, NTCA argues that the most important thing the FCC can do to promote

[23] GVNW, p. 6.
[24] NRTA, p. 6.
[25] NRTA, p. 9.

broadband deployment in rural areas is to put in place policies that make the provision of advanced services economically viable, and that "[t]he only way to make advanced services viable in many areas of the country is through universal support."[26]

APPA submits that these incumbent carriers are wrong with respect to markets served by public power utilities. Public power's participation in providing advanced infrastructure can effectively advance both the goals of universal service and competition. Unlike incumbent rural carriers that eschew competition and seek access to greater universal service subsidies, public power utilities, if not denied the opportunity by state barriers to entry, will deploy advanced capabilities in rural areas and help lower the costs of universal service in the process. In its initial comments, APPA provided examples of public power utilities from around the country that were responding to their communities' needs and providing advanced telecommunications capabilities.

Because public power utilities are structured to provide low cost service, they can make advanced telecommunications services affordable to the communities they serve without having to meet a specific "profit margin." Moreover, because public power utilities already have, or will have, telecommunications infrastructure in place, as well as internal operational requirement for advanced services, they can often provide telecommunications capabilities to others at only an additional incremental cost.

As RPRI indicates, public power utilities can serve as "anchor tenants," "through which broader diffusion of the technology occurs."[27] For example, in many cases, public power utilities have fiber optic rings that pass close by key user groups such as schools, libraries and hospitals. The importance of providing advanced telecommunications capabilities to such entities in rural

[26] NTCA, pp. 4, 6.
[27] RRPI, p. 5.

areas cannot be underestimated. The American Library Association (ALA) points out that in rural areas libraries may require more capacity than others in their communities as they try to fulfill their role as community information center, independent learning center and reference library to community businesses. "In these instances, the hurdles may include not only affordability, but availability of broad-band access to telecommunications services. In small, rural communities in the West, libraries have been told that a service is simply not available in that community because a telecommunications provider cannot make a "business case" to justify deployment of the technology, such as T-1 service."[28]

As ALA further notes, the Universal Service program does not improve the likelihood that a service previously unavailable in a rural area or other under-served area will suddenly become available. "For a service that is not available in an area because a "business case" cannot be made, the Universal Service program will not ameliorate the deficit. Other efforts must be made by the FCC to assure deployment of advanced telecommunications services in such areas."[29]

APPA firmly believes that public power utilities are the key to providing advanced telecommunications for many rural and under-served areas. Their public ownership and community responsiveness will result in the development of creative local means of providing advanced capabilities at affordable prices to target populations. Moreover, because they will be leveraging infrastructure built primarily to serve their core requirements of providing electric service, public power utilities are able to extend advanced services to the people who need them most, and at the same time reduce the level of federal and state universal service funding that would otherwise be necessary to provide such services in rural markets.

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[28] ALA, pp. 6-7.
[29] ALA, pp. 11-12.

D. Public Power Will Introduce The "Yardstick" And "Birchrod" Of Competition

In its *NOI*, the Commission states that it is struck by the large number of companies that assert that they have or soon will have the capability to deploy advanced capabilities. The FCC notes that these companies may produce a significant degree of competition, conceivably even for rural areas. The Commission inquires as to whether such an optimistic scenario is realistic, and if it is, how the FCC can create incentives for such competitive entry. The FCC also asks whether the deployment of advanced services will start in each area, with an initial spark of deployment by one entrant. *NOI*, ¶¶ 56, 58.

While the private sector has indicated that the FCC's scenario for competitive entry is overly optimistic for rural areas, APPA believes that once a competitor introduces advanced services into a market, the incumbent carrier may redouble its efforts to provide advanced capabilities. As AT&T observes, ILECs plainly can, and often will, deploy advanced capabilities when a competitor emerges to challenge their bottleneck control over last mile facilities.[30]

In many instances public power utilities can provide the spark that may ignite competition to provide advanced services in many rural and under-served markets. As discussed in APPA's and other's initial comments, public power utilities have the incentive and the means to enter into markets where private sector carriers would be unlikely to focus their attention. Moreover, because public power utilities typically seek to provide infrastructure to a third-party competitive entrant, the participation of public power utilities in telecommunications allows for the introduction of facilities-based competition that might not otherwise be possible in certain markets.

[30] AT&T, p. 10.

Demonstrating the essential need for public utilities' participation and involvement in deploying advanced services is the example of SBC. In its comments, SBC indicates its reluctance to deploy advanced services in rural markets, stating: "Even where advanced telecommunications capability is available that could technically and operationally be deployed, the expected demand and associated costs may make the deployment uneconomical, particularly in rural areas." *** "Whatever non-economic benefit that might otherwise be seen as sufficiently beneficial to make a marginal investment (e.g., community relations) just disappears as competitors are able to claim the investment for themselves. [Indeed, deployment could easily result in more competition for ILECs in the rural areas than otherwise might be faced by the ILECs, and for the best consumers, those that want and are willing to pay for advanced services]." [31]

SBC's statement is a tacit admission that it does not intend to deploy advanced infrastructure in many of the rural markets that public power utilities seek to serve, until SBC considers those markets economically viable. In fact, SBC is not only indicating that it has no incentive to provide advanced service to rural markets, but it is also suggesting that it is reluctant to deploy infrastructure in rural areas because it might allow for competition. The provision of infrastructure by public power utilities will allow for advanced services, and introduce competition into areas where SBC, and other ILECs, are attempting to retain monopoly control.

Public power utilities offer potential private partners a level of investment security and stability that they would not otherwise enjoy. This security comes from the public power system's intimate involvement as both a user of telecommunications services and a facilitator of community development. As the commenters demonstrate, financial insecurity is one of the primary reasons why new competitive entrants do not enter rural markets.

[31] SBC, pp. 7-8.

In addition, where public power utilities provide telecommunications services themselves, their operation as non-profit entities enables them to give consumers benchmarks of the true costs of providing advanced telecommunications capabilities. In the face of such competition, incumbents may lower their prices, improve quality of service, or accelerate their deployment of advanced services. The FCC's *Fourth Annual Cable Competition Report*, confirms this phenomenon:

> [W]e note the significant steps that cable operators have taken when subject to head-to-head competition, in the relatively few areas where such competition has developed. In such cases, cable operators have responded quickly with a mix of increased programming choices, lower rates, and improved customer service. The exact combination of these responses has varied among operators, as it should in a competitive market where consumer demand -- not monopolist strategies or government regulations -- dictates the supplier's response. We will continue to strive to make a competitive marketplace a reality for all consumers.[32]

As APPA noted in its initial comments, President Franklin Roosevelt described this ability of a community to establish its own utility when it is not satisfied by the service it is receiving as both a "yardstick" by which they can measure the quality of service, and a "birchrod" by which they can introduce competition. Over the last six decades, public power utilities have repeatedly proven that Roosevelt's "yardstick" and "birchrod" concepts work well in practice. These concepts will be equally effective in the telecommunications area, as scores of communities that operate their own electric utility systems will begin to offer their residents telecommunications capabilities.

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[32] *Annual Assessment of the Status of Competition in Markets for the Delivery of Video Proramming, Fourth Annual Report*, CS Docket No. 97-141, released January 13, 1998, ¶ 10.

IV. ACTIONS THE COMMISSION SHOULD TAKE TO FACILITATE THE RAPID DEPLOYMENT OF ADVANCED TELECOMMUNICATIONS CAPABILITIES

The Commission has asked for recommendations of actions that it can take to encourage the rapid deployment of advanced telecommunications capabilities to all consumers. Below, APPA demonstrates that the commenters support the major policy objectives that APPA believes the Commission should apply, and then APPA reviews the specific actions that it recommends the Commission take.

A. Policy Recommendations

1. Comments Confirm That Commission Should Not Unduly Focus On The Private Sector As The Source Of Advanced Telecommunications Capabilities

In its initial comments, APPA noted that among the key goals of the Telecommunications Act are the introduction of competition, the removal of barriers to entry, the maintenance of competitive neutrality and non-discrimination, the promotion of maximum consumer choice among providers, and the rapid deployment of advanced telecommunications technologies for all consumers. In furthering these objectives, the Commission has found that the "overriding" goals of the Telecommunications Act are to enable "*all* providers to enter *all* markets"[33] and to remove barriers that prevent consumers from choosing telecommunications providers "from as wide a variety of providers as the market will bear."[34] Consistent with these statements, the Commission has indicated in the *NOI* that it intends to afford advanced technology "every opportunity to

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[33] *In the Matter of Classic Telephone, Inc. Petition for Preemption, Declaratory Ruling and Injunctive Relief*, CCBPol 96-10, *Memorandum Opinion and Order*, ¶ 25, 11 FCC Rcd 13082 (1996) ("Classic Telephone"), quoting *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order, FCC 96-325, ¶ 4 (rel. August 8, 1996) ("*Interconnection Order*") (*emphasis added*).

[34] Statement of William E. Kennard Before the Senate Subcommittee on Antitrust, Business Rights, and Competition (March 4, 1998) at 1.

flourish" by seeking "ways to make its deployment more efficient and *more inclusive*." *NOI*, ¶ 1 (*emphasis added*).

In order to effectuate this highly laudable goal, APPA reiterates that the Commission should be careful not to adopt an overly narrow focus on private sector deployment of advanced telecommunications capabilities. There is nothing in the Act to suggest that municipalities, and public power utilities in particular, should be denied a full and fair opportunity to contribute to the rapid deployment of advanced telecommunications. To the contrary, as demonstrated in APPA's comments, the legislative history of the Act reveals that Congress fully intended that public power utilities play a major role in deploying advanced telecommunications technologies.

APPA's argument is all the more compelling in light of the private sector's explicit admissions that they do not intend to focus their efforts at advance service deployment in rural and high-cost areas of the country. Public policy advocates for consumer groups recognized this point, and have urged the FCC not to rely entirely on the private sector. For example, RPRI notes that private market forces may prove inadequate in fostering the development of advanced services in certain areas, and that the FCC should consider initiatives which support the movement toward advanced services in a variety of ways when the marketplace is unable to provide sufficient motivating incentives to carriers. Therefore, RPRI recommends that cooperative arrangements such as cost-sharing, perhaps involving both the public and private sector, may be required. [35]

Similarly, APT supports establishment of a Federal/state policy framework that encourages community-based organizations and telecommunications providers to create

[35] RPRI, p. 3.

partnerships in which the parties identify technology applications that address the needs of communities and use the organization's aggregated demand to pull investment.[36] This is precisely what many public power utilities and joint action agencies are doing, and attempting to do, in communities around the nation. However, in order to provide maximum utility and consumer choice, communities must have the flexibility to go beyond the mere aggregation of demand, and actually deploy telecommunications infrastructure.

In order to ensure against an overly narrow focus on the private sector, the FCC should seek to include representatives from public power or municipalities at Commission-sponsored forums related to the deployment of advanced telecommunications capabilities. For example, the FCC's "Bandwidth Task Force" should include public sector representatives in its outreach activities.

2. The Commission Should Recognize that the Benefits of Section 706 Are Intended For All Americans, And In Particular, Rural Consumers

In its initial comments, APPA characterized the goals of Section 706 as the embodiment of the policy discussions that took place in the early 1990's concerning the need for a "National Information Infrastructure" or an "Information Superhighway." As such, the primary goal of Section 706 is to seek ways to accelerate the deployment of advanced Telecommunication capabilities to all Americans including those members of the public who might not otherwise obtain access to such capabilities.

Several commenters recognize that advanced telecommunications infrastructure and capabilities are essential to buttress the fragile economies of rural communities. As NRTA indicates, state-of-the-art telecommunications systems are essential if smaller communities are to

[36] APT, pp. 3,6-8.

become and remain competitive as the national and global economy become increasingly information dependent.[37] Similarly, RPRI notes that as telecommunications technology continues to diminish "space," access to that technology becomes essential for economic development. Put another way, RPRI states that "where rural economic development opportunity and telecommunications infrastructure are intertwined, the provision of advanced telecommunications services is less marketable product than a necessity for business retention and expansion."[38]

While a large number of carriers demonstrated strong interest in providing advanced telecommunications capabilities, the vast majority of them indicated that their interest in deploying advanced infrastructure is limited to businesses and "high-end" users that provide sufficient return on investment. For example, NRTA stated that the incentive to invest in rural improvements requires a reasonable expectation of profit before an investment will take place. NRTA further indicated that its "members are increasingly providing Internet services, as well as making high-speed DS-1 and DS-3 lines available and initiating ISDN *where demand from business customers justifies incurring the necessary costs.*"[39] NTCA also indicated that many of its members may only provide advanced services to select subscribers, such as schools and businesses.[40]

Unlike many private sector carriers, public power utilities will focus on community development for its own sake, and will strive to serve all consumers in the community rather than just the most profitable. On both legal and policy grounds, public power utilities will avoid discrimination in the provision of services and strive to provide fair and equal treatment to all segments of their communities. Based on the record in this proceeding, it appears that in many

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[37] NRTA, p. 6.
[38] RPRI, pp. 2, 7.
[39] NRTA, p. 5 *(emphasis* added).
[40] NTCA, p. 3, fn. 3.